IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-21707-2020(O&M)
Date of Order:16.12.2020

AMIT SIWACH **..Petitioner**

Versus

STATE OF HARYANA AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravinder Malik, Advocate,
for the petitioner.

Mr. Samarth Sagar, Addl.A.G.,Haryana.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioner was employed on contract basis as Assistant District Attorney on 26.07.2016. His services were dispensed with on 29.05.2020, resulting in filing of a writ petition. During the pendency, the order was withdrawn. Now the services of the petitioner has been dispensed with vide order dated 14.07.2020 which reads as under:-

> *"In view of expiry of the period of contract of Sh. Amit Siwach Law officer (Contractual) on 14.07.2020 and the vacancy arising therefrom Sh. Harshi Goyal (appointed as Assistant District Attorney at Hisar on regular basis) is deployed as Assistant District Attorney Rohtak in public and HSVP interest. This order shall be implemented with immediate effects."*

Learned counsel for the petitioner relies upon the order passed in Civil Writ Petition No.10597 of 2020 and submits that the case of the petitioner is similar to Bhagi Rath Singh. The order passed in Civil Writ Petition No.10597 of 2020 on 24.07.2020 reads as under:-

> *"The petitioner is seeking to quash the order dated 13.07.2020 (Annexure P-8) vide which his request for*

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joining has been declined alleging that he was appointed on contractual basis only for a period of six months.

It has been contended by learned counsel for the petitioner that the post is sought to be filled up by another contractual employee and the process has been initiated in terms of the letter/order dated 17.07.2020 (Annexure P-9).

Counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court rendered in Civil Appeal No.8745-2003 (Arising out of SLP (C) No. 14751-2001) to state that the petitioner is entitled to be continued in service till regular appointment is made. It has been further stated that the work and conduct of the petitioner is satisfactory without any complaint against him.

Notice of motion for 28.08.2020.

Mr. Sharad Aggarwal, AAG, Haryana, accepts notice on behalf of respondent(s)-State.

Till the next date of hearing, the petitioner shall be allowed to continue in service till regular appointment is made, on minimum of the pay scale, subject to the condition that his work and conduct remain satisfactory."

It is not in dispute that Sh Harshi Goyal, who has replaced the petitioner, is a regular employee. Thus, the case of the petitioner is distinguishable from the case of Bhagi Rath Singh.

Learned counsel for the petitioner submits that the posts are still vacant.

Be that as it may. The court cannot direct an employer to continue to engage contractual employees merely because the posts are lying vacant. It is the discretion of the employer keeping in view the workload available. The petitioner does not have any right to continue on the post, particularly when he has been replaced by a regular employee.

In view thereof, no ground to issue a writ as prayed for.

Dismissed.

December 16, 2020 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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